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Ronald P. Kananen, Esq.
Rader, Fishman & Grauer, L.P.P.C.
1223 20th Street, N.W., Suite 501
Washington, DC 20036

In re Application of :
Takao MUROOKA et al :
Application No.: 09/647,321 : DECISION ON
PUT No.: PUT/JP00/00262 :
Int. Filing Date: 20 January 2000 : PETITION
Priority Date: 29 January 1999 :
Attorney's Docket No.: KO1-048 : UNDER 37 CFR 1.181
For: METHOD AND APPARATUS :
FOR DETERMINING ANTENNA :
POINTING PARAMETERS IN A :
SATELLITE RECEIVER :

This decision is in response to the "Petition Under 37 CFR 1.181 To Request Withdrawal of the Holding of Abandonment," requesting the withdrawal of the Notification of Abandonment mailed on 20 September 2001.

DISCUSSION

On 28 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application, and a postcard return. Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

BACKGROUND

On 25 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within one month from its 25 October 2000 date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. In addition, the surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e)).

On 20 September 2001, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS (PCT/DO/EO/905); accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 20 September 2001, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 02 November 2000, within the time period of response.

DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard lists the items submitted on 02 November 2000 and it indicates, *inter alia*, declaration and power of attorney was submitted on such date. Applicant states that the papers accompanying the present petition are copies of the papers that were submitted on 02 November 2000 and referred to in the postcard receipt.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard receipt serves as *prima facie* evidence of receipt of the listed items on 02 November 2000 by the USPTO.

In view of the above, the applicant's response is considered timely. Accordingly, the instant application has been improperly abandoned.

CONCLUSION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED.

The NOTIFICATION OF ABANDONMENT, mailed 20 September 2001 has been VACATED.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371 date of 02 November 2001.



Rafael Bacares
PCT Legal Examiner
Work (703) 308-6312
Fax (703) 308-6459



Leonard E. Smith
PCT Legal Examiner
PCT Legal Affairs